

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

05-CR-6069L

v.

EUGENE LIBBETT,

Defendant.

Defendant, Eugene Libbett (“Libbett”), was sentenced on his guilty plea principally to 110 months imprisonment on February 28, 2007. Libbett duly filed a notice of appeal.


Libbett has now filed a *pro se* motion (Dkt. #68) which he styles as a “Petition Request for Leave to File Writ of Mandamus Seeking Ineffective Assistance of Counsel.” He moves pursuant to Rule 21 of the Federal Rules of Appellate Procedure.

The motion/petition (Dkt. #68) is in all respects denied. There is no such procedure as a writ “seeking ineffective assistance of counsel.” If Libbett wishes to raise ineffective assistance of counsel, he can attempt to do so on his direct appeal or in a collateral proceeding, pursuant to 28 U.S.C. § 2255.

CONCLUSION

The motion/petition (Dkt. #68) of Eugene Libbett is in all respects denied. Plaintiff's motion to proceed *in forma pauperis* (Dkt. #69) is denied as moot.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
January 7, 2008.